

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.108

**RSA-1448-2021 (O&M)
Date of decision : 25.02.2022**

Swaranjit Singh

..... Appellant

VERSUS

Jatinder Kumar

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Aditya Dassaur, Advocate, for the appellant.

SUDHIR MITTAL, J.

The bare relevant facts are that a suit for specific performance of agreement to sell dated 27.09.2007 was executed in respect of land measuring 25 kanals and 06 marlas @ Rs.6,00,000/- per acre. The defendant received earnest money amounting to Rs.05,50,000/- and executed a separate receipt. Registered sale deed was to be executed on or before 26.09.2008 on payment of the balance sale consideration. The defendant failed to abide by the agreement and thus, the suit was instituted with the averment that the plaintiff was always ready and willing to perform his part of the contract, but the defendant has backed out therefrom. Prior to the institution of the suit, a legal notice was also sent.

The defendant was proceeded against ex parte and the suit was decreed vide ex parte decree dated 20.03.2012. The said decree was

set aside by the First Appellate Court vide order dated 19.07.2016. Thereafter, the defendant appeared on 16.08.2016 and filed his written statement.

The execution of agreement to sell dated 27.09.2007 was denied. Receipt of earnest money was also denied. It was averred that the agreement to sell was a fraudulent and fabricated document and was the result of collusion between the scribe, alleged witnesses and the plaintiff. Fabrication is apparent on the record as the signature alleged to be that of the defendant is in Punjabi script. The defendant does not sign in Punjabi script. Receipt of notice was also denied.

The trial Court dismissed the suit, but the plaintiff's appeal has been allowed. Suit for specific performance has been decreed and the defendant has been directed to execute the sale deed within two months from the date of passing of the judgment. Thus, the defendant has preferred the present Regular Second Appeal.

Learned counsel for the appellant has argued that the appellate Court was in error in allowing the appeal. The agreement to sell dated 27.09.2007 had not been proved in accordance with law as the stamp vendor and deed writer had not been produced to prove the same. That apart, the agreement to sell was surrounded by suspicious circumstances. It had been executed at Nawanshahr, whereas, the land in dispute is situated in Tehsil Balachaur, where admittedly, a large number of stamp vendors and deed writers are available. Further, although PW-2 has stated that the agreement to sell bore the stamp of the deed writer, but in fact, it did not. Reliance has been placed upon **Joseph Johan Peter**

Sandy Vs. Veronica Thomas Rajkumar and another, 2013 (2) RCR (Civil) 461 as well as **Richhpal Singh Vs. Sandhura Singh, 2013 (3) Civil Court cases 242.** Reliance has also been placed upon **Subhash Chander and others Vs. M/s Active Promoters Pvt. Ltd, 2015 (1) RCR (Civil) 62.**

Let us examine this argument first. An attested document can always be proved by examination of the attesting witnesses. In this case, the agreement to sell dated 27.09.2007 has been proved by the plaintiff as well as by an attesting witness, namely, Davinder Kumar who appeared as PW-2. Both have stated that the defendant executed the agreement to sell and received earnest money of Rs.05,50,000/-. Thus, the agreement to sell stood proved. The argument that non-examination of stamp vendor and deed writer had resulted in failure to prove the agreement, cannot be accepted. No legal principle has been formulated to support this argument. The argument has been raised only on the basis of **Joseph Johan Peter Sandy (supra), Richhpal Singh (supra)** and **Subhash Chander (supra).** In **Joseph Johan Peter Sandy (supra),** a suit had been filed for declaration that an agreement deed to exchange property was null and void being a forgery and having been obtained by undue influence. The case put-forth was that signature had been obtained on blank papers. It was under these circumstances that it was held that non-examination of the scribe had resulted in non-proving of the agreement deed to exchange. Only the scribe could have stated whether the person challenging the validity of the document had come to him for execution of the document or not. If, a party had not done so then the

case of the other party that signatures had been obtained on blank papers had to be accepted. Further, this judgment does not lay down any law that non-examination of a scribe results in non-proving of an agreement. The judgment is distinguishable on facts. In **Richhpal Singh (supra)** also, no such law has been laid down. The said judgment has been rendered on the facts of that case. In **Subhash Chander (supra)**, the defendant had disputed the execution of agreement to sell. The agreement to sell was a typed proforma containing many blanks. The blanks had been filled in with different coloured inks. The agreement to sell also did not bear the defendant's signature on the back side of the stamp paper. The stamp paper also did not bear the name of the person who had purchased the same. It was under these circumstances that this Court held that non-examination of the scribe and stamp vendor was fatal. It may also be noted that in this case, the vendee was a company and authorized representative who had signed the agreement to sell but had not stepped into the witness box. This judgment too is distinguishable on facts and does not lay down any law as has been argued by learned counsel for the appellant.

Reference to suspicious circumstances is also not tenable in law. A Will may be discarded if it is surrounded by suspicious circumstances, but not an agreement to sell. Judgments in **Subhash Chander (supra)** as well as **Hans Raj Tuteja Vs. Parwati and others, 2018 (3) RCR (Civil) 821** are also not applicable. **Subhash Chander (supra)** has already been distinguished on facts. The observation therein regarding suspicious circumstances is only on account of the facts of the

said case and no general proposition of law has been laid down. In **Hans Raj Tuteja (supra)** also, the reference to suspicious circumstances is based on the facts of the said case. Thus, the argument is rejected.

It has next been argued that the plaintiff while appearing as PW-1 had admitted that he did not know the defendant personally and that he did not meet him after the date of execution of agreement to sell. Yet, he has averred in the plaint that cause of action arose about a week earlier when the defendant started hurling threats. There was no question of any threats being hurled by the defendant when he never met the plaintiff after execution of the agreement to sell. Thus, no cause of action arose and the suit was liable to be dismissed.

This argument is also liable to be rejected as making of a false averment in the plaint is not a ground for dismissal of the suit. If, the defendant was serious about this issue, he could have sought rejection of the plaint on this ground, but he never chose to do so. In second appeal, he cannot raise this point, especially when, it has not been raised before the Courts below.

The next argument raised is that the agreement is patently a forged document as the defendant never signed in the Punjabi script. His passport Ex.D1 shows that he signs in the English language. Even his driving license bears his signature in the English language and the same is Ex.D2 on the record. This alone was sufficient to show that the agreement to sell was a fabricated document. Moreover, the defendant was not even present in India on the date of execution of agreement to sell

and the appellate Court has failed to take this very important evidence into consideration.

A perusal of the judgment of the appellate Court shows that the passport (Ex.D1) was issued on 09.05.2008 and the driving license (Ex.D2) was issued on 13.12.2010. The agreement to sell is dated 27.09.2007 and notice issued before the institution of the suit was delivered on 25.09.2008. Neither of the documents were signed prior to the date of execution of the agreement to sell dated 27.09.2007 and thus, the learned First Appellate Court was justified in holding that the signature in English language on the said document was not sufficient to prove that the defendant never signed in the Punjabi script. The reason given to reject the argument of the defendant not being in India on the date of execution of agreement to sell is that only the earlier passport could show whether it was so. On re-issuance of passport the old passport is returned, yet, the same was not produced in evidence. This reasoning is logical and is entitled to be accepted. The argument is accordingly rejected.

It has also been argued that burden of proof of fraud and forgery has wrongly been placed upon the defendant. Once, a document is denied by the defendant, the onus is on the plaintiff to prove that no fraud was involved. Reliance has been placed upon **Thiruvengada Pillai Vs. Navaneethammal and another 2008 (2) RCR (Civil) 262.** In this case, a suit for specific performance was filed on the basis of an agreement to sell which was executed on two stamp papers issued on different dates. The first was of the year 1973, whereas, the second was

of the year 1978. The attesting witnesses were close relative of the plaintiff and the evidence of the scribe regarding execution of the document was considered to be unsatisfactory. It was also found that the recital in the agreement to sell that possession had been transferred was false. The defendant was an illiterate woman who had sold her property to a co-defendant within a month of the date of the alleged agreement to sell and this fact was held to be consistent with the conduct of a person who was unaware of an agreement to sell. In view of these circumstances, it was held that it was for the plaintiff to dispel the doubt created. In the instant case, the plaintiff has proved the agreement to sell and thus, the issue of wrong onus does not arise. The judgment is being misread. Any judgment has to be read in the facts and circumstances of that case and stray observations here and there cannot be picked up to buttress an argument. In any case, it is settled law that it is for the party who alleges a fact to prove the same. For these reasons, this argument is also rejected.

Finally, it has been argued that the plaintiff had failed to establish that he had the capacity to pay the balance sale consideration and that he was ready and willing to perform his part of the contract. The First Appellate Court has erred in not taking this very important point into consideration. Reliance has placed upon **Sukhwinder Singh Vs. Jagroop Singh and another, 2020 (1) RCR (Civil) 951.**

This argument too is mis-conceived. In **Sukhwinder Singh (supra)**, the vendor did not contest the suit for specific performance and suit was decreed ex parte. The ex parte judgment and decree was

challenged by the subsequent purchaser and under the circumstances, the Supreme Court held that readiness and willingness as well as financial capacity were essential to be proved in a suit for specific performance. In the instant case, the defendant had completely denied the agreement to sell. His entire focus was on the agreement being a forged and fictitious document. Once that has been held against him, he cannot clutch at straws in the faint hope of success. The argument may have been justified, had it been his case that he was all along ready and willing to perform his part of the contract.

In view of the above, the appeal has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

25.02.2022

Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes
Yes